BROEGE, NEUMANN, FISCHER & SHAVER, L.L.C.
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DS 9825

UNITED STATES BANKRUPTCY COURT
District of New Jersey

In Re:	:	
Steven Winograd,	:	CHAPTER 7 CASE NO. 16-34582-MBK ADV. PRO. NO.
Debtor.	:	
Broege, Neumann, Fischer & Shaver, L.L.C.,	:	
Plaintiff,	:	**COMPLAINT OBJECTING TO DISCHARGEABILITY OF DEBT PURSUANT TO 11 U.S.C. § 523(a)(2)(A)**
vs.	:	
Steven Winograd,	:	
Defendant.	:	

The Plaintiff, Broege, Neumann, Fischer & Shaver, LLC, "BNF&S", by way of Complaint against the Defendant Steven Winograd states as follows:

PARTIES

1. The Creditor/Plaintiff BNF&S is a New Jersey Limited Liability Company with its office located at 25 Abe Voorhees Drive, Manasquan, New Jersey 08736.

2. The Defendant/Debtor is an individual who resides at 240 South Lincoln Avenue, Apartment 32, Elberon, New Jersey 07740.

3. The Debtor filed for relief under Chapter 7 of the U. S. Bankruptcy Code on December 30, 2016.

4. The Plaintiff is a creditor of the Debtor who was listed on Schedule F of Debtor's Chapter 7 Bankruptcy petition as holding an unsecured claim of $10,147.80.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

6. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A),(I),(J) and (O).

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1408 and § 1409.

FACTS

8. Defendant contacted the Plaintiff on December 2, 2014 and then met with the Plaintiff the next day, December 3, 2014, about a pending eviction action and a possible Chapter 13 Bankruptcy filing.

9. On December 8, 2014 Defendant signed a December 4, 2014 Retainer Agreement with BNF&S whereby BNF&S agreed to provide legal services for a Chapter 13 Bankruptcy filing that would stay the eviction action and enable a Chapter 13 Plan to be proposed to cure the rent arrears over time so that Winograd could continue to remain living in his residence. Mr. Winograd agreed to pay a set fee of $3,810 to BNF&S for standard Chapter 13 legal services, inclusive of the $310 filing fee, and an hourly rate of $300 per hour for non-standard Chapter 13 legal services.

10. Pursuant to the terms of the Retainer Agreement BNF&S agreed to provide legal services to Defendant Steven Winograd and did so for the period of December 2, 2014 through April 23, 2015.

11. Debtor ultimately paid only $800 to BNF&S on account of and for the legal services that BNF&S provided to him pursuant to the Retainer Agreement.

12. Other than the initial payment of $800 the Defendant made no additional payment to BNF&S for legal services provided and disbursements incurred, and when he signed the December 4, 2014 Retainer Agreement, Defendant had already determined that he was not going to pay any more to BNF&S other than that initial $800.

13. The Defendant made, on several different occasions, oral promises to pay for all legal services to be rendered by BNF&S. The Defendant intended BNF&S to rely on those promises and BNF&S did so rely. Those promises were made by the Defendant at the initial meeting that he had with the Plaintiff and then repeatedly thereafter after the Defendant signed the Retainer Agreement.

14. At the times that the Defendant made the oral promises of payment he had no intention of making payments and his statements were false.

15. The Defendant requested and received, and enjoyed the benefits of, the legal services of BNF&S on and after the dates that he had already determined not to make payment of BNF&S invoices.

16. The Defendant obtained legal services from BNF&S by false pretenses, fraudulent inducement, false representations, and actual fraud.

COUNT ONE

(For a determination of nondischargeability of debt as one incurred by false pretenses, a false representation or actual fraud contrary to 11 U.S.C. § 523(a)(2)(A))

17. The Plaintiff repeats and realleges the allegations of the preceding paragraphs.

18. 11 U.S.C. § 523(a)(2)(A) provides as follows:

> A discharge under section 727, 1141, 1228(a), 1228(b) or 1328(b) of this title does not discharge an individual debtor from any debt -
>
> (2) for money, property, services, or an extension, renewal or refinancing of credit, to the extent obtained by -
>
> (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

19. At the time that Defendant retained BNF&S and signed the Retainer Agreement he had no intention of ever paying BNF&S more than the initial $800 retainer payment. Defendant made repeated express knowing misrepresentations about his intent to pay BNF&S for its legal services, upon which BNF&S reasonably relied, and fraudulently induced BNF&S to provide $10,147.80 in legal services, for which Defendant has not paid.

20. The actions of Winograd in his dealings with BNF&S were wrongful, malicious, and without just cause or excuse and were contrary to accepted business mores in the State of New Jersey.

21. The Defendant obtained legal services from the Plaintiff through false pretenses, fraudulent inducement, false representations, and actual fraud.

WHEREFORE, the Plaintiff BNF&S demands entry of Final Judgment against Debtor/Defendant Steven Winograd determining and declaring that the $10,147.80 debt owed by him to Plaintiff is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and awarding costs of suit, prejudgment interest, and such other relief as the Court determines fair and equitable.

Broege, Neumann, Fischer & Shaver, LLC
Attorneys for Creditor/Plaintiff Broege, Neumann, Fischer & Shaver, L.L.C.

BY: *_/s/ David E. Shaver_*
David E. Shaver

Dated: March 22, 2017